

MITIGATED NEGATIVE DECLARATION

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

NAME OF PROJECT: Spreckles Sanitary Sewer Force Main Supplement & Pump Station Rehabilitation Project

PROJECT FILE NUMBER: PP11-104

PROJECT DESCRIPTION: Rehabilitation of the Spreckles Pump Station and installation of a supplemental sanitary sewer force main between the pump station and the Water Pollution Control Plant to provide reliable wastewater service for the Alviso community. The first segment of the new 10-inch diameter force main (Line A) will extend approximately one mile from the Spreckles Pump Station to the WPCP, within the rights-of-way of Spreckles Avenue, Grand Boulevard, and Los Esteros Road. The second portion of the force main (Line B) will connect to the end of Line A on Los Esteros Road and extend southeast onto the WPCP property for approximately 1,500 – 2,000 linear feet to connect to a pumping station. Two possible Line B pipeline alignments are under consideration, as shown on the project site plan.

PROJECT LOCATION & ASSESSORS PARCEL NO.: The project site is located at the Spreckles Pump Station on the west side of Spreckles Avenue, north of State Street in Alviso; the supplemental force main alignment extends from the pump station to the San Jose/Santa Clara Water Pollution Control Plant (WPCP), within the public right-of-way along Spreckles Avenue, Grand Boulevard, and Los Esteros Road. From Los Esteros Road, the force main will extend south onto the WPCP property approximately 1,500 to 2,000 linear feet, to connect to the existing Emergency Basin Overflow Structure (EBOS). The project is located within the public right-of-way and on Assessor Parcel Numbers (APNs) 015-30-098, 015-31-024, 015-31-044, 015-14-005, 015-14-006, and 015-14-018.

COUNCIL DISTRICT: 4

APPLICANT CONTACT INFORMATION: City of San Jose, Department of Public Works, Transportation and Hydraulics Services Division, 200 East Santa Clara Street, Tower 5, San Jose, CA 95113 (Rajani Nair, Engineer II; Phone:(408) 535-8306)

FINDING:

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

- I. AESTHETICS.** The project will not have a significant impact on aesthetics or visual resources, therefore no mitigation is required.
- II. AGRICULTURE AND FOREST RESOURCES.** The project will not have a significant impact on agriculture or forest resources, therefore no mitigation is required.
- III. AIR QUALITY.** The project will incorporate all standard BMP measures during construction and will not have a significant air quality impact, therefore no mitigation is required.
- IV. BIOLOGICAL RESOURCES.** The project could have potentially significant impacts on biological resources, sensitive habitats and wetlands. Mitigation measures are identified below that will reduce these potential impacts to a less-than-significant level.
 1. For both Lines A and B, prior to construction activities the project proponent shall retain a qualified biologist to conduct an Employee Education Program for the construction crew. The biologist shall meet with the construction crew at the project site at the onset of construction to educate the construction crew on the following:
 - a) Review of the project boundaries;
 - b) Special-status species that may be present, their habitat, and proper identification;
 - c) Specific mitigation measures that will be incorporated into the construction effort including the installation of exclusionary fencing along coastal salt marsh to prevent impacts to coastal salt marsh special-status species,
 - d) General provisions and protections afforded by all relevant regulatory agencies; and
 - e) Proper procedures if a special status animal is encountered within the project site.

This mitigation measure applies to all special-status species and sensitive habitats as described in the preceding impact section.
 2. For Line B, the project proponent shall retain a qualified biologist to conduct preconstruction surveys to locate active breeding or wintering burrowing owls no more than 30 days prior to the start of construction. If ground disturbing activities are delayed or suspended for more than 30 days after the preconstruction survey, the site shall be resurveyed. The survey shall conform to the CDFG 1995 Staff Report protocol. If no burrowing owls are found, no further mitigation is required. If burrowing owls are found, impact avoidance shall occur and if avoidance is not possible, then mitigation measures shall be implemented as described below.

- a) Complete impact avoidance shall be pursued to the extent possible by compliance with the following provisions:

Breeding Season. If active nests are found, then no ground-disturbing activities will be permitted within 250 feet of an active burrow during the breeding season (February 1 to August 31).

Winter Season. If active burrows are found during winter months (September 1 through January 31), ground disturbing activities can proceed no closer than 160 feet from active burrows.

Avoidance also requires that a minimum of 6.5 acres of foraging habitat be permanently reserved contiguous with occupied burrow sites for each pair of breeding burrowing owls (with or without dependent young) or single unpaired resident bird.

- b) If active nests or burrows are found that cannot be avoided, the following mitigation measures would apply:

On-Site. On-site passive relocation shall be implemented if the above avoidance measures cannot be met. Passive relocation is defined as encouraging owls to move from occupied burrows to alternate natural or artificial burrows that are beyond 160 feet from the impact zone, and that are within or contiguous to a minimum of 6.5 acres of foraging habitat for each pair of relocated owls. The land utilized for relocation shall be acquired and permanently protected at a location acceptable to the CDFG. Existing unsuitable burrows shall be enhanced (enlarged or cleared of debris) or new burrows created (by installing artificial burrows) at a ratio of 2:1 on the protected lands site. Relocation of owls shall only be implemented during the non-breeding season. A time period of at least one or more weeks is necessary to accomplish the passive relocation methods, and allow the owls to move and acclimate to alternative burrows.

Occupied burrows shall not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by the CDFG verified through non-invasive methods that either: 1) the birds have not begun egg-laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

The project proponent shall provide funding for long-term management and monitoring of the protected lands. The monitoring plan shall include success criteria, remedial measures, and an annual report to the CDFG and the Director of the City of San Jose Planning, Building and Code Enforcement.

Off-site. If the project will reduce suitable habitat on-site below the threshold level of 6.5 acres per relocated pair or single bird, the habitat shall be replaced off-site. Off-site habitat must be suitable burrowing owl habitat, as defined in the Burrowing

Owl Survey Protocol, and the site approved by the CDFG. Land shall be purchased and/or placed in a conservation easement in perpetuity and managed to maintain suitable habitat. The land shall be funded by the project proponent for long-term management and monitoring of the protected lands. The monitoring plan shall include success criteria, remedial measures, and an annual report to the CDFG and the Director of Planning, Building and Code Enforcement of the City of San Jose. Off-site mitigation shall use one of the following ratios:

- Replacement of occupied habitat with occupied habitat: 1.5 times 6.5 (9.75) acres per pair or single bird.
- Replacement of occupied habitat contiguous to currently occupied habitat: 2 times 6.5 (13.0) acres per pair or single bird.
- Replacement of occupied habitat with suitable occupied habitat: 3 times 6.5 (19.5) acres per pair or single bird.

This mitigation measure applies specifically to burrowing owls, as described in the preceding impact section.

3. For both Lines A and B, if construction of the project occurs during the typical avian nesting season (February 1 – September 30), the project proponent shall retain a qualified biologist to conduct focused preconstruction surveys for nesting birds no more than 14 days prior to initiation of construction activities in areas that may provide suitable nesting habitat within 300 feet of construction activities. If active nests are found, a suitable construction buffer shall be established by the qualified biologist (typically 300 feet) and no work shall occur within that buffer until September 30. Alternatively, a qualified biologist can conduct weekly nest checks to gauge nestling/fledgling status, and construction may proceed once fledglings have dispersed from the nest provided written concurrence is obtained from CDFG. No active nest shall be impacted or removed. For activities that occur outside of the nesting season (generally October 1 through February 1), preconstruction surveys are not required. This mitigation measure applies to all nesting birds within or immediately adjacent to the project site; including those listed in the preceding impact section.
4. Pre-construction surveys conducted for burrowing owls should also be used to determine the presence or absence of badgers within the annual grasslands located within the project site. In the unlikely event that an active badger den is identified during pre-construction surveys within or immediately adjacent to the construction envelope, a construction-free buffer of up to 300 feet or a suitable distance specified by the resource agencies (i.e., CDFG) should be established around the den. Because badgers are known to use multiple burrows in a breeding burrow complex, a biological monitor should be present onsite during construction activities to ensure the buffer is adequate to avoid direct impact to individuals or nest abandonment. The onsite monitor would be necessary until it is determined that young are of an independent age and construction activities would not harm individual badgers. Once it has been determined that badgers have vacated the site, the burrows could be collapsed or excavated, and ground disturbance could proceed. Because potential impacts to badger habitat would be temporary in nature, no offsite mitigation is warranted for loss of habitat for the

badger. This mitigation measure applies specifically to badgers, as described in the preceding impact section.

5. For both Lines A and B, prior to any construction activities the project proponent shall install orange cyclone fencing and silt fencing upslope from wetland boundaries to ensure that dirt or other material does not enter wetland or salt marsh areas. This fencing shall be inspected and repaired as necessary through the duration of the project construction to maintain proper function. These measures will ensure that construction activities do not impact any wetland features surrounding the limits of construction. This mitigation measure applies to sensitive habitats including coastal salt marsh and wetlands, as described in the preceding impact section.
6. For Line A, prior to any construction activities, the project proponent shall install orange cyclone fencing and silt fencing on the border of any project area adjacent to coastal salt marsh habitat. This fencing shall be inspected and repaired as necessary through the duration of the project construction to maintain proper function. The measures will ensure that construction activities do not impact coastal salt marsh habitat or any special-status species, including salt marsh harvest mouse, salt marsh wandering shrew and salt marsh common yellowthroat, which occur within coastal salt marsh habitat.
7. For Line A, no equipment shall be operated within Alviso Slough, nor shall any construction activities be conducted in Alviso Slough. This mitigation measure applies to sensitive habitat including wetlands and coastal salt marsh, as described in the preceding impact section.
8. For both Lines A and B, temporary soil stockpiles shall be located so they do not drain directly into waterways. Stockpiles shall be covered to prevent erosion toward the slough. This mitigation measure applies to sensitive habitat including wetlands and coastal salt marsh, as described in the preceding impact section.
9. For both Lines A and B, the project proponent shall comply with water pollution protection provisions and conditions established by all regulatory agencies with jurisdiction over the project. These measures will include, but may not be limited to, the following:
 - a) Provide a 'boring plan' to a relevant agencies that includes:
 - 1) A sketch of the construction site, equipment staging areas, approximate location of drill entry and exit points and the approximate location of access roads in relation to the surrounding area.
 - 2) Proposed depth of bore and a statement of streambed condition that supports the depth of the bore.
 - 3) Approximate length of bores.
 - 4) Type and size of boring equipment to be used.
 - 5) Estimated time to complete bore.

- 6) List of lubricants and horizontal directional drilling (HDD) additives to be used.
 - 7) Name of operator's agents and cell phone numbers.
- b) Design, pre-plan, and direct the trenchless crossings in such a way as to minimize the risk of spills of all types. The contractor shall provide a contingency plan, in the event of the release of drilling lubricants through fractures in the slough or bank ("frac-outs"). In substrates where frac-outs are likely to occur, the project contractor shall operate in a manner that will reduce risk, such as using lower pressure and greater boring depths.
- c) Prepare and implement a frac-out contingency plan to minimize potential for frac-out during directional drilling and describe BMPs for dealing with a frac-out, should one occur. Prevention and clean-up plans should include:
- 1) Name(s) and phone numbers of biological monitor(s), third-party monitors, and crew supervisor(s).
 - 2) Site-specific resources of concern (if applicable, include factors such as possible presence of sensitive species).
 - 3) Monitoring protocols (including biological monitoring and frac-out monitoring).
 - 4) Containment and clean up-plan (include staging location of vacuum trucks and equipment, equipment list, necessary hose lengths, special measures needed for steep topography, etc. at each location).
- d) In case of a frac-out into a sensitive aquatic resource, the project proponent shall cease operations immediately and request a consultation with all relevant agencies. If frac-out or spill is in an upland area without sensitive resources and the frac-out can be contained, the City may continue work. The City's biological monitor shall provide on-site training for the work crews to ensure protection of all slough zones. The contractor will provide continuous monitoring of the HDD boring operation to ensure adequate protection controls have been installed. All field personnel will be briefed in their responsibility for timely reporting of frac-out releases to the monitor on site.

This mitigation measure applies to sensitive habitat including wetlands and coastal salt marsh, as described in the preceding impact section.

- V. **CULTURAL RESOURCES.** There is some potential that excavation for the project could uncover buried archaeological resources. This impact will be reduced to a less-than-significant level with the standard measures listed below.

As a part of the development permit approval, the project will conform to the following standards:

1. Should evidence of prehistoric cultural resources be discovered during construction, work within 50 feet of the find shall be stopped to allow adequate time for evaluation and

mitigation by a qualified professional archaeologist. If evidence of any archaeological, cultural, and/or historical deposits is found, hand excavation and/or mechanical excavation shall proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. The archaeologist shall submit reports, to the satisfaction of the City's Environmental Principal Planner, describing the testing program and subsequent results. These reports shall identify any program mitigation that the developer shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial, and duration of archaeological resources).

If it appears that earthmoving activities will affect a resource potentially eligible for the inclusion on the California Register of Historic Resources (CRHR), a plan for the evaluation of the resource to demonstrate significance shall be submitted to the Director of PBCE for approval. If testing, normally limited hand excavation, demonstrates CRHR eligibility, a plan for mitigation of impacts to the resource shall be submitted and approved by the Director of PBCE before construction before construction-related earthmoving is allowed to recommence inside the zone designated as archaeologically sensitive.

2. As required by County ordinance, the project shall incorporate the following guidelines. Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California, in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

VI. GEOLOGY AND SOILS. The project will not have a significant impact due to geology and soils, therefore no mitigation is required.

VII. GREENHOUSE GAS EMISSIONS. The project will not have a significant impact due to greenhouse gas emissions, therefore no mitigation is required.

VIII. HAZARDS AND HAZARDOUS MATERIALS. The project may result in significant impacts associated with the presence and release of hazardous materials on the project site during construction. Mitigation measures identified below will reduce these impacts to a less-than-significant level.

1. Prior to initiation of earthwork activities, the project proponent shall sample for asbestos at locations of planned earthwork in the South Bay Asbestos Area. Sampling and construction activities within the SBAA shall be coordinated with the San Jose Environmental Services Division and the U.S. EPA. In addition, the project proponent

shall perform soil and ground water sampling and analytical testing along the planned force main alignment at selected locations to evaluate fill, ground water, and soil quality and aid in establishing appropriate soil and ground water management procedures.

2. Based on the soil and ground water data obtained in mitigation (#10) above, the project proponent shall prepare a Site Management Plan (SMP). The SMP will establish protocols/guidelines for the contractor to follow and will include the following components: identifying appropriate health and safety measures while working in contaminated/non-contaminated areas; soil reuse and/or landfill disposal options for excavated trench spoils; handling of contaminated trench spoils; ground water management options if trench dewatering is required; and agency notification requirements. A Health and Safety Plan (HASP) will be attached to the SMP to establish health and safety protocols for personnel. The SMP shall be subject to the review and approval of the California EPA and City of San Jose Environmental Service Division.

- IX. HYDROLOGY AND WATER QUALITY.** The project will not have a significant hydrology and water quality impact, therefore no mitigation is required.
- X. LAND USE AND PLANNING.** The project will not have a significant land use impact, therefore no mitigation is required.
- XI. MINERAL RESOURCES.** The project will not have a significant impact on mineral resources, therefore no mitigation is required.
- XII. NOISE.** The project will not have a significant noise impact, therefore no mitigation is required.
- XIII. POPULATION AND HOUSING.** The project will not have a significant population and housing impact, therefore no mitigation is required.
- XIV. PUBLIC SERVICES.** The project will not have a significant impact on public services, therefore no mitigation is required.
- XV. RECREATION.** The project will not have a significant impact on recreation, therefore no mitigation is required.
- XVI. TRANSPORTATION / TRAFFIC.** The project will not have a significant traffic impact, therefore no mitigation is required.
- XVII. UTILITIES AND SERVICE SYSTEMS.** The project will not have a significant impact on utilities and service systems, therefore no mitigation is required.
- XVIII. MANDATORY FINDINGS OF SIGNIFICANCE.** The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no mitigation is required.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on **April 24, 2012**, any person may:

1. Review the Draft Mitigated Negative Declaration (MND) as an informational document only;
or
2. Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND.

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Circulation period, from March 26, 2012 to April 24, 2012



Deputy

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